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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,910	09/10/2003	Tom Blanchester	TLA03,05	3610

27165 7590 06/29/2006

YI LI
CUSPA TECHNOLOGY LAW ASSOCIATES
11820 SW 107 AVENUE
MIAMI, FL 33176

EXAMINER

TYLER, STEPHANIE E

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/658,910	Applicant(s) BLANCHESTER, TOM	
	Examiner Stephanie E. Tyler	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-6 and 8-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/10/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (published on June 5, 2003) in view of Pugh (2,085,809).

The Lee reference shows a spout assembly with a bottle cap (100) having a neck (fig.2), a cap body (206), an upwardly protruding nozzle (206) at the upper portion of the bottle cap (100), an outlet opening (202) at the edge portion of the nozzle (206) for dispensing liquid therefrom by tilting the bottle (C), a closing lid (300) that is movable to close and open the outlet opening (202), a straw (204) located adjacent to the outlet opening (202) for drinking through the straw (204).

However the Lee reference lacks a straw being a telescope straw having a first straw portion and a second straw portion; with the second straw portion being axially movable and extending upwardly out of the nozzle.

Pugh teaches a container (1) in figure 2 through 4 with a telescopic straw having an outer straw (23) and an inner straw section (21) for the purpose of having the outer straw section (23) with an "collar (27) at the upper end of the container to prevent the outer straw section from being pulled upwardly out of the opening" (col.2, lines 6-8); and

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a inner straw section for sliding and extending out container for sipping purposes (col. 1, lines 71, 72; col. 2, lines 1,2,11-13,24-28). Further the inner straw section has a collar (25) for the purpose of gripping with the mouth and sipping purposes.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the Lee bottle cap with a telescopic straw having inner and outer straw sections as taught by Pugh in order to have the telescopic straw be fixed in place and be able to move and extend, so consumers can place their mouth on straw when in use.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (published on June 5, 2003) in view of Jarbeau (2,613,988).

The Lee reference discloses substantially all the features of the bottle cap arrangement; however lacks a telescope straw with the second straw having a radial thickened portion and the first straw having a waist at an upper end portion that bears against the thickened portion of the lower portion of the second straw.

Jarbeau teaches a beverage dispensing device in figure 3 where the second straw (9) has a radial thickened portion (see fig.1 for top of tube (9))¹ and the first straw (11) has a waist at an upper end portion (12) that bears against the thickened portion (10) of the lower portion of the second straw for the purpose of "restraining from becoming separated from one another" (col. 2,lines 14&15).

¹ Please refer to Appendix A for specified features.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the Lee bottle cap with a telescope straw having a thickened radial portion on the lower end of the first straw as taught by Jarbeau in order to secure the first and second straw portions together and preventing the two portions from coming apart.

Allowable Subject Matter

4. Claims 3-6,8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claim 7 is allowed.
6. Claims 14-18 cancelled.

Response to Amendment

7. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie E. Tyler whose telephone number is 571-272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SET


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

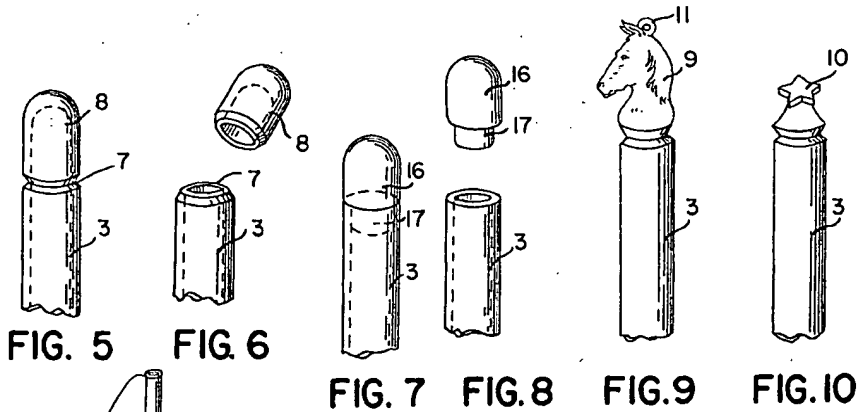
Appendix A

Oct. 14, 1952

C. F. JARBEAU
BEVERAGE DISPENSING DEVICE

2,613,988

Filed May 8, 1950



Thickened
Portion

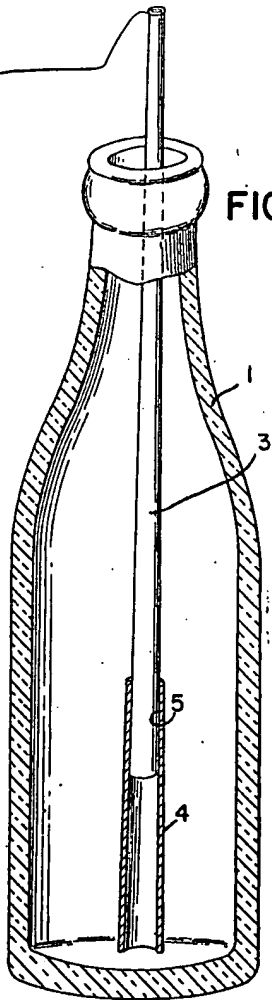


FIG. 1

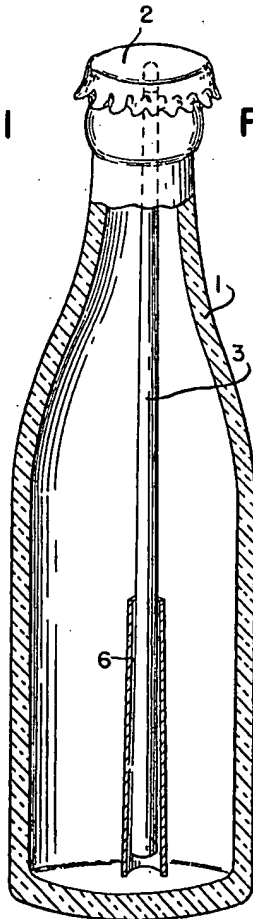


FIG. 2

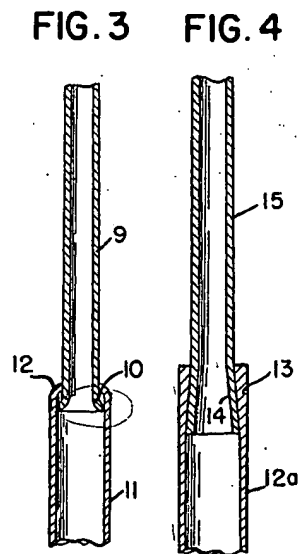


FIG. 3

FIG. 4

INVENTOR
CHARLES F. JARBEAU
By
Toulmin & Toulmin
ATTORNEYS.